



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2003

Ms. Julie Joe  
Assistant County Attorney  
Travis County  
P. O. Box 1748  
Austin, Texas 78767

OR2003-7201

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189179.

The Travis County District Attorney's Office (the "district attorney") received a request for information pertaining to the arrest and prosecution of a specified person for the rape of another specified person on or about August 2, 1975. You state that some responsive information is not subject to the Public Information Act (the "Act"). You claim that the remaining requested information is excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that this office has ruled that tangible physical items are not the type of information contemplated under the Act. *See, e.g.,* Open Records Decision No. 581 (1990). Thus, we agree that the responsive tangible information that the requestor has requested is not public information as that term is defined in section 552.002 of the Government Code. *See* Gov't Code § 552.002. Consequently, such evidence is not information that is made public by section 552.021 of the Government Code.

We now address your claims regarding the submitted information. You claim that the submitted information is excepted from disclosure in its entirety pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>1</sup> Information is protected from disclosure under the common-law right to privacy if it is information that (1) contains highly intimate or embarrassing facts, the release of which would be highly

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683.

In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, in this instance, the request for information reflects that the requestor in this matter knows the identity of the alleged sexual assault victim. Thus, we believe that withholding only the alleged victim's identifying information from the requestor in this instance would not preserve the victim's common-law privacy interests. Accordingly, we conclude that the district attorney must withhold the entirety of the submitted information pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report

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<sup>2</sup> Because we base our ruling on section 552.101 of the Government Code, we need not address your section 552.130 claim.

that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 189179

Enc. Submitted documents

c: Mr. Mark Bennett  
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(w/o enclosures)